

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ERIC ALBRITTON,

Plaintiff,

v.

CISCO SYSTEMS, INC. and
RICHARD FRENKEL,

Defendants.

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Case No. 6:08-CV-89

**ORDER DENYING MOTION TO QUASH TRIAL SUBPOENA OF NON-PARTY
MICHAEL SMITH**

Pending before the court is a “Motion to Quash Trial Subpoena” of non-party Michael Smith (docket entry #285) filed on September 3, 2009. Having considered the motion and the Defendant’s response in opposition thereto, the court finds that the motion should be **DENIED**.

In his motion to quash, Mr. Smith states that he received a subpoena to appear and testify at the trial of this cause beginning on September 14, 2009 at 9:00 a.m. Smith argues that pursuant to FED. R. CIV. P. 45(c)(3)(a)(iv), the subpoena subjects him to an undue burden. Smith, an attorney, notes that he is scheduled to begin a trial at 9:00 a.m. on September 14, 2009 at the United States District Court in Marshall, Texas in *Crane Co., et al. v. Sandenvendo America, Inc., et al.*, 2:07-cv-42. Additionally, Smith asserts that he is scheduled to begin another trial, also in Marshall, Texas, on September 21, 2009 in the 71st Judicial District Court of Harrison County, Texas in *Norit Americas, Inc. v. ADA-ES, Inc., et al.*, cause number 08-0673, with jury selection scheduled for September 16, 2009.


In response, the Defendant argues that Smith has failed to show that his attendance at trial

will cause him undue burden. The Defendant contends that Smith is one of nine attorneys representing Sandenvendo America, Inc. Further, Smith is not named as Sandenvendo America, Inc.'s lead attorney. Additionally, after filing his motion to quash, Smith notified the Defendant herein that the *Norit Americas, Inc.* trial has been continued.

The court understands that Mr. Smith is a busy lawyer and has already been deposed in this case. However, the parties are, of course, entitled to present live testimony at trial, and the travel time between Marshall and Tyler is not long. Based on the foregoing, the court finds that Smith has failed to show that his appearance at trial will cause him undue burden. The court notes that both the Plaintiff and the Defendants have listed Smith as someone who may be called as a witness at trial. *See* AMENDED JOINT FINAL PRE-TRIAL ORDER, EXHS. G & I. Since both parties may have an interest in calling Smith live at trial, Smith should be required to appear at trial. However, in light of the order entered by the court on this date, there is no need for Smith to appear at trial until the day that he will be called to testify. *See* ORDER GRANTING CISCO SYSTEMS, INC.'S MOTION TO DESIGNATE NEXT DAY TRIAL WITNESSES (docket entry #295) (the parties shall provide to each other their witnesses for the following day not later than 5:00 p.m. on the day prior to such witnesses' testimony). Accordingly, the "Motion to Quash Trial Subpoena" of non-party Michael Smith (docket entry #285) is hereby **DENIED**.

IT IS SO ORDERED.

SIGNED this the 8th day of September, 2009.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE